IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12094 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRADESH KELVANI MANDAL ASHRAM SHALA (BAKSHI)

Versus

KHANT JAGUBHAI GALABABHAI

Appearance:

1. Special Civil Application No. 12094 of 2000

MR JV JAPEE for Petitioner No. 1

MR RD RAVAL for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/10/2001

ORAL JUDGEMENT

#. Rule. Mr.Raval waives service of rule for the respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. The petitioner has challenged the award passed by the Labour Court, Himatnagar in Reference (LCH) No.870 of 1996. The petitioner has also challenged the order passed below Exh.13 in Misc.Application No.17 of 1999 by which the Labour Court has refused to condone the delay in preferring the application for setting aside exparte award.

#. The respondent workman was serving in the petitioner institution as Chokidar-cum-Peon. He had challenged the termination order dated 15.8.1994 on various grounds. In the said Reference (LCH) No.870 of 1996, the Labour Court passed the order of reinstatement with full back-wages. The said award was passed on 13.5.1999. Thereafter, the petitioner institution filed the application under Rule 26-A of the Industrial Disputes Rules (Gujarat Rules) for setting aside exparte award. The said application was rejected by the Labour Court, Himatnagar on 20.5.2000 on the ground that there is a delay of more than 45 days in filing such application and that no sufficient ground was given for such delay. The petitioner has challenged the original award as well as the order by which the delay was not condoned.

#. At the time of hearing of this petition, there is a consensus prevailing between the parties. The petitioner institution has agreed to reinstate the respondent workman on his original post, i.e. Peon in another school of the petitioner institution. The name of such School is Bhartiya Vidhya Mandir Davli, Taluka Modasa, District Sabarkantha. On behalf of the petitioner institution Mr.Japee, learned advocate, states that if the respondent workman reports for duty in the aforesaid school, he will be given posting immediately on the post of Peon. He states that, after giving appointment order to him, the respondent workman will be paid salary prescribed for the said post.

#. Mr.Raval, appearing for the respondent, has fairly stated that the respondent workman has no objection if he will be given new appointment, on the regular basis, on the post of Peon.

#. In view of the aforesaid consensus prevailing between the parties, the petitioner institution is directed to give appointment order to the respondent workman for the post of Peon as early as possible and preferably within a week from today. For that purpose, the respondent workman may report for duty within a period of one week from today.

#. It is not in dispute that the petitioner's brother was serving in the petitioner institution and unfortunately while in service, he had died. Otherwise also, the respondent workman is entitled to be appointed on compassionate ground in the petitioner institution. Therefore, in view of the aforesaid circumstances, after the respondent workman being given the appointment in the petitioner institution, the respondent workman may make necessary application to the petitioner institution to consider his case for appointment as Peon in the petitioner institution on compassionate ground as his brother was a permanent employee of the petitioner institution. Mr.Japee states that, after receiving such application, the same will be forwarded to the concerned department of the Government for the purpose of recruiting the respondent workman on compassionate ground. Mr.Raval states that the respondent workman has no income worth the name and practically he is starving and that he has large a family to maintain and he will maintain his family from the salary which he will receive from the petitioner institution. In the aforesaid circumstances, the State Government may consider the aforesaid question sympathetically while taking decision for giving approval to the petitioner institution to allow the respondent workman to continue on the said post on compassionate ground. Even, as per the award of the Labour Court, the respondent workman is also required to be reinstated in the particular school of the petitioner institution, but according to Mr.Japee, that institution has been closed, and, therefore, the petitioner institution is required to absorb the respondent workman in another school of the petitioner institution, of which reference is made above. The State Government may, therefore, consider the case from the proper angle while giving approval to the petitioner institution to allow the petitioner institution to appoint the respondent workman on compassionate ground.

#. Mr.Japee submits that the order of the back-wages may be set aside. Mr.Raval submitted that the respondent workman is not claiming any back-wages which has been awarded by the Labour Court, Himatnagar since the petitioner institution has agreed to reinstate him on the post of Peon on regular basis. He further submits that, the respondent workman is having financial difficulties and the matter was pending since long. Mr.Japee states that the petitioner institution is willing to give reasonable amount of costs and, on suggestion, Mr.Japee has agreed that, in all, Rs.11,000/- will be paid to the respondent workman towards the costs of this litigation

and whatever amount, which has been deposited by way of interim order of this Court, will be included in the total amount. The respondent workman is permitted to withdraw the amount of Rs.2500/- (Rupees Two Thousand Five Hundred Only) which has been deposited in this Court by way of interim order. Remaining amount will be paid by the petitioner institution by way of Account Payee Cheque to the respondent workman within a period of four weeks from today.

#. It is clarified that, this order is passed in view of the consensus prevailing between the parties.

##. In view of what is stated above, Mr.Japee wants to withdraw this petition. Permission is granted. The petition stands disposed of accordingly. Rule is discharged. Liberty to apply in case of difficulty.

(P.B.Majmudar,J)
(pathan)